



## January 2012

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### President Makes Three NLRB Recess Appointments

The [New York Times](#) reported President Barack Obama made three recess appointments to the National Labor Relations Board. The decision to install the "nominees without Senate approval under the constitutional provision for making appointments when lawmakers are in recess was a provocative opening salvo in Mr. Obama's re-election strategy of demonizing Congress."

[Politico](#) reported, "The president used his power to name Sharon Block, Terence Flynn and Richard Griffin to the board, which arbitrates workplace disputes and federal labor issues and has recently drawn considerable fire from Republicans after it sided with an aircraft workers' union in a dispute with aerospace giant Boeing. When the term of Craig Becker, another Obama recess appointee, expired at the end of last month, the five-member board no longer had a quorum, threatening its continued operation. Block and Griffin are Democrats, while Flynn is a Republican."

The [Los Angeles Times](#) reported, "The appointments are almost certain to lead to legal challenges from businesses affected by the consumer bureau or the labor board. Unless a court rules otherwise, the nominees can serve until the end of 2013."

The [AP](#) added, "With an eye on the upcoming South Carolina primary, Republican presidential candidates [last] Thursday assailed President Barack Obama for bypassing the Senate to name three new members to the National Labor Relations Board. Newt Gingrich called on Congress to eliminate funding for the agency, which Republicans claim favors labor unions." Rick Santorum "warned, 'You are not above the law, Mr. President. We don't want the NLRB to be filled with a bunch of cronies who work for the labor unions.'"

Senate Republicans had previously urged President Obama not to make recess appointments to the NLRB Board. In a December post to the "Transportation Report" blog in [The Hill](#), Kevin Bogardus wrote that in a letter to President Obama "all 47 GOP senators said he should allow the Senate to consider his nominees, Sharon Block and Richard Griffin" rather than make recess

appointments of the two National Labor Relations Board nominees. The letter urged "a full and thorough review of their qualifications through regular order in the Senate," adding that recess appointments "would, at the very least, set a dangerous precedent that would most certainly be exploited in future cases to further marginalize the Senate's role in confirming nominees and could needlessly provoke a constitutional conflict between the Senate and the White House."

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## **Canadian Oil Producers Predicted to Look to Asian Markets Without Keystone**

The [AP](#) reported that during a speech Tuesday in Oklahoma City, TransCanada Vice President for Keystone Pipelines Robert Jones said "Canadian oil producers will look to Asian markets if the U.S. government fails to approve the Keystone XL pipeline project," because of incentives in that market like "China's economic growth." However, Jones also said he thinks "it makes more sense to keep Canadian oil in North America because it is more efficient and benefits both the United States and Canada."

[Dow Jones Newswires](#) reported that TransCanada says its proposed \$7 billion, 1,600-mile Keystone XL pipeline would generate 20,000 U.S. jobs, including "13,000 construction jobs, plus 7,000 in manufacturing." TransCanada has pledged they'll do "whatever is necessary" to help get the Keystone pipeline built.

Meanwhile, the [AP](#) reported that 2012 begins with President Obama and Congress disputing the proposed Keystone XL pipeline, as Obama must "make a speedy decision on whether to build the pipeline." Obama, the AP noted, has "enjoyed strong support" from parties on both sides of the pipeline debate, environmentalists and labor unions, making his decision "a dicey proposition." In a December 12 letter, the State Department warned that the 60-day "arbitrary deadline" to decide on the pipeline "would compromise the process." Pipeline supporters say that if the U.S. rejects Keystone XL, it can still be built, because Canadian Prime Minister Stephen Harper "has said TransCanada could pursue an alternative route through Canada to the West Coast."

The "E2 Wire" blog in [The Hill](#) noted last week that "the White House and Republicans will spend the next several weeks trying to win the messaging war over the controversial project." According to Natural Resources Defense Council director of international programs Susan Casey-Lefkowitz, "the President is going to have no choice but to reject the pipeline" now that he has 60 days to consider the measure. However, American Petroleum Institute lobbyist Marty Durbin "said the measure in the tax package" gives officials "the time they need, however much time they need, to review what's going on in Nebraska." He added, "in our view it's a slam-dunk decision because it benefits the country in terms of jobs and national security."

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## **Court of Appeals Stays Job-Killing EPA Rule Impacting Power Plants**

On Friday, December 30, the U.S. Court of Appeals for the D.C. Circuit stayed the Cross-State Air Pollution Rule (CSAPR). This action stops the Environmental Protection Agency (EPA) from enforcing the rule until the Court has completed full consideration of the legal challenges against it.

The EPA issued the CSAPR in July 2011. The rule replaces the Clean Air Interstate Rule (CAIR) that the D.C. Circuit determined was unlawful in 2008 and would implement a portion of the Clean Air Act that prohibits states from allowing emissions of pollutants in amounts that will contribute significantly to air quality problems in other states.

The rule would require power plants in 28 states—including states in the South, Midwest and Mid-Atlantic—to reduce emissions that contribute to ozone and/or fine particle pollution. It also would set up an emissions trading program.

Business and industry representatives are concerned that the CSAPR will raise electricity costs, compromise grid reliability and lead to more job losses. Had the court not granted the stay, the rule would have taken effect on January 1, an extraordinarily short period of time between the finalization of the rule and its implementation.

Click [here](#) to read the *per curiam* order granting the stay.

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## **Judge Orders EPA Not to Freeze Boiler MACT Rules**

This week U.S. District Court Judge Paul Friedman ruled to revoke the stay of the Boiler MACT and Incinerator rules. The ruling also reinstates the March 21, 2014, compliance date for the Boiler MACT Rule. Industry representatives including the National Association of Manufacturers (NAM) were quick to comment on the ruling. In a [press release](#), NAM President for Energy and Resources Policy Chip Yost said, "The court's ruling to revoke the stay of the Boiler MACT and Incinerator rules will severely harm manufacturers' competitiveness, add to their uncertainty and cost vital jobs. It is already 20 percent more expensive to manufacture in the U.S. compared to our trade partners, and regulations such as Boiler MACT continue to set us back." Yost said, "The EPA Regulatory Relief Act received bipartisan support when it passed the House last October, and manufacturers urge the Senate to act now to save jobs."

In the ruling, Friedman wrote, "The Court acknowledges that vacating the Delay Notice likely will have an effect on industry facilities throughout the country: they will finally, more than 12 years after a clear congressional mandate, have to comply with overdue Clean Air Act emission standards.... Vacating the Delay Notice, therefore, will simply require industry facilities to comply with emission standards that EPA itself states are consistent with the Clean Air Act."

[Click here](#) to read the ruling.

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## **Obama Defends Regulations in Speech to EPA Employees**

The [AP](#) reported President Obama "defended the work of the Environmental Protection Agency on Tuesday, saying he would stand with the agency that has taken a beating from Republicans in Congress and on the presidential campaign trail for regulations that the GOP maintains will cripple the economy and kill jobs. ... Making his first-ever visit to the EPA," Obama "took issue with those claims, saying he did not buy the notion that there is a choice between clean air and clean water

and a growing economy." Obama is quoted as saying, "We don't have to choose between dirty air and dirty water or a growing economy."

[The Hill](#) said in its "E2 Wire" blog that Obama "took a jab at Republicans and industry groups, who have mounted a massive campaign to delay or block a slew of EPA regulations, arguing they will burden the economy and cost jobs." According to The Hill, "The speech Tuesday was aimed partly at boosting morale at the agency, which suffered a brutal defeat when Obama punted on highly anticipated regulations aimed at lowering ozone pollution. ... But the remarks were also intended to deliver a clear message to the Republican White House hopefuls...that Obama doesn't intend to shy away from environmental issues on the campaign trail."

The [Wall Street Journal](#) "Washington Wire" blog said that the President highlighted EPA decisions made during his Administration, citing stricter regulation of mercury emissions from coal-fired power plants announced in December. Obama said that "part of the reason it was a big deal was because for over 20 years, special interest groups had successfully delayed implementing these standards when it came to our nation's power plants."

However, in its "Green" blog, the [New York Times](#) pointed out that during his speech, "Obama did not mention the two most controversial environmental actions he has undertaken - halting the EPA's efforts to tighten its smog standard and to take steps to regulate carbon dioxide and other greenhouse gases that contribute to the warming of the planet."

In its coverage of this story, [Bloomberg News](#) noted that "Republican presidential candidates, including former House Speaker Newt Gingrich and Representative Ron Paul, have called for abolishing the EPA. And former Massachusetts Governor Mitt Romney said in a December 4<sup>th</sup> debate that the agency 'has gotten completely out of control' and is hindering energy development."

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## **Obama Proposes Tax Breaks for Manufacturers That Bring Jobs Back to U.S.**

The [New York Times](#) reported, "President Obama said on Wednesday that he would propose tax incentives for companies to bring home manufacturing jobs they had moved overseas, and curtail tax breaks for those that keep relocating jobs abroad. Flanked by executives from the aerospace, chemical and furniture industries - all of whom are building or expanding factories in the United States - Mr. Obama declared that the nation was beginning to see the reversal of a long-term trend toward outsourcing."

The [Los Angeles Times](#) reported, "The White House said in the coming weeks Obama would propose new tax provisions to reward companies that bring back jobs to the U.S. or make new investments here, and would move to eliminate tax breaks for companies that ship jobs overseas."

The [AP](#) reported, "Obama highlighted big and small firms ranging from Ford to a North Carolina specialty furniture company as examples of enterprises that have invested in the U.S. rather than abroad."

The [Washington Post](#) reported, "Obama did not give any more details about the proposals he will make. But some close to the White House expect him to repackage old ideas, such as making it

harder for U.S. companies to postpone paying taxes on foreign profits, along with new ideas. One idea that the administration has explored is a recurring tax credit for profits derived from selling products developed in the United States, but it is unclear whether this will be part of the package the president will announce."

Meanwhile, [IndustryWeek](#) reported, "Economic conditions, natural resources and technological innovation are making it harder for manufacturers to 'justify moving jobs offshore,' according to a report conducted by Reynders, McVeigh Capital Management. "Companies are turning from offshoring to homeshoring as the cost advantages of moving production to China and other locations become less significant. The wage gap between China and the U.S. is shrinking, the report notes. Wages in China are rising at a predicted 15 percent to 20 percent annually while U.S. wage rates are growing at only 2 percent."

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